

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4843 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BHURABHAI RATABHAI PARMAR

Versus

PASIBEN D/O. RAMABHAI HARIBHAI

Appearance:

MR R A Mishra for Petitioner
RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 30/06/2000

ORAL JUDGEMENT

Heard Mr R A Mishra, learned Advocate for the
petitioner. None appeared for the respondent.

The petitioner has filed this petition under Article 227 of the Constitution of India challenging the orders passed by the Secretary (Appeals), Revenue Department, Government of Gujarat on 30.10.1986 whereby the learned Secretary allowed the aforesaid revision filed by the respondent and quashed and set aside the earlier orders recorded by the Collector on 19.3.1984. The facts may be briefly stated as follows:

2. The petitioner above named purchased certain lands and applied for the mutation of entries before the Dy.Mamlatdar, Nadiad. The Dy.Mamlatdar allowed the same by passing order dated 31.10.1982. Accordingly the lands purchased by the petitioner from the respondent were ordered to be mutated in the name of the petitioner.

3. Feeling aggrieved by the order of the Dy.Mamlatdar, the respondent abovenamed preferred an R.T.S. Appeal being No.23 of 1983 and contended that the aforesaid land was sold by the respondent to the petitioner under registered sale deed dated 1.4.1966. That however, the aforesaid land was a fragment and, therefore, it was not permissible to sell the same and, therefore, the mutation of entries should be cancelled. The aforesaid matter was heard by the Dy. Collector in R.T.S. Appeal No.23/83 and decided on 12.12.1983. The appeal of the respondent was dismissed and the orders of the Dy.Mamlatdar were confirmed. Against the said order of the Dy.Collector, the respondent preferred Application No. RTS/RA/5 of 1984 before the Collector, Kheda District. The Collector also heard the matter and decided it on 19.3.1984 dismissing the said appeal of the respondent and confirming the orders of the Dy.Mamlatdar as well as the Dy.Collector referred to above. Feeling aggrieved by the judgment and order of the Collector, the respondent preferred revision application before Secretary (Appeals), who allowed the said revision and quashed and set aside the order passed by the Collector, Dy.Collector as well as the Dy.Mamlatdar by judgment dated 30.10.1996.

4. Feeling aggrieved by the judgment and order of the Secretary (Appeals), the petitioners have filed this petition under Article 227 of the Constitution of India. It has been contended here that the learned Special Secretary has failed to appreciate the evidence on record, that he also failed to appreciate that the disputed lands were sold to the petitioner way back in 1966 by registered sale deed and since then the petitioner is cultivating the said land, that the learned Secretary also failed to appreciate that the disputed

lands and the land owned by the petitioner are adjoining land and this itself will show that there is no violation of any of the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. That there was lands of the petitioner adjacent to the suit lands and, therefore, the petitioner was entitled to purchase the said land without committing any violation of provisions of Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. That this aspect has been lost sight of and, therefore, the judgment and order of the Special Secretary are illegal and are required to be quashed and set aside. The petitioner, therefore, filed this Special Civil Application and prayed for appropriate writ, order or direction setting aside the aforesaid judgment and order of the Special Secretary dated 30.10.1986

5. This petition was admitted and rule was issued as back as on 27.12.1989. However, none appeared for the respondent. Therefore, I have heard the learned Advocate for the petitioner and have perused the papers. It is an admitted fact that the petitioner has purchased four pieces of lands from the respondent and it is the case of the respondent that the lands in question were fragment and, therefore, sale and purchase thereof was prohibited in view of the provisions contained in the Bombay Prevention of Fragmentation & Consolidation of Holdings Act, 1947. There is no serious dispute that the lands were fragment and sale of fragment was impermissible. However, learned Advocate for the petitioner has contended that there were lands of the petitioner adjacent to the lands in dispute and, therefore, as the neighbouring land owner and landholder, the petitioner was at liberty and entitled to purchase the lands which may be even fragment. In other words his argument is that purchase of fragment land by neighbouring landholder is not impermissible.

6. It is the case of the petitioner that he was having lands adjoining to the lands in question. The Dy. Collector as well as the Collector appear to have upheld the aforesaid contention of the petitioner. However, Special Secretary has decided the matter other way and has observed that there is no evidence to show that the petitioner has his own land adjacent to the land in dispute and, therefore, sale was against the provisions of the said Act. Learned Advocate for the petitioner states that since the Dy. Collector as well as Collector have held that the petitioner has his own land adjacent to the land in question, no other evidence appears to have been produced before the learned Special

Secretary. Therefore, the matter went against the interest of the petitioner. He, therefore, prays that in view of the aforesaid position it would be just and proper to permit the petitioner to adduce proper evidence in order to have a decision on the point as to whether or not the petitioner has his land adjacent to the land in question. Naturally, if the petitioner has his land in the neighbourhood of the disputed land, then the matter would have been different and a different decision could have been arrived at by the learned Special Secretary. However, the said evidence does not appear to be with the Special Secretary. Therefore, the matter went against the petitioner.

7. In the aforesaid view of the matter, I am of the view that when the two officers have considered the matter in favour of the petitioner and when the Special Secretary has decided the matter against the petitioner only on the ground that there is no material to show that the petitioner has his land adjacent to the land in dispute, then in that case, the petitioner should get an opportunity to meet with the case as aforesaid. For so doing, it will be necessary to quash and set aside the orders passed by the learned Special Secretary and remand the matter back to the Dy. Collector with a direction to permit the parties to lead evidence before him with respect to the situation of the land and with respect to violation of the aforesaid Act.

8. In the aforesaid view of the matter, this petition is partly allowed. The judgment and order of the learned Special Secretary, Revenue Department, Government of Gujarat dated 30.10.1986 are quashed and set aside. The matter is remanded to the Dy. Collector, Nadiad for deciding the same afresh after issuing notice to the parties and after giving due opportunities to the parties of being heard and of producing evidence for deciding the issue as to whether there was violation of provisions of Bombay Prevention of Fragmentation & Consolidation of Holdings Act, 1947. The said officer will decide the aforesaid matter on merit without being influenced by the observations of the learned Special Secretary in his judgment and order dated 30.10.1986 or the observations made by this Court.

The petition is partly allowed. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

